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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.G., a Person Coming Under the
Juvenile Court Law.

B235724
(Los Angeles County
Super. Ct. No. CK84118)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

O.G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for
Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, Jacklyn K. Louie, Principal Deputy County Counsel for Plaintiff and
Respondent.

INTRODUCTION

At the outset of this dependency proceeding, the juvenile court erroneously found that O.G. (father), father of C.G., was C.G.'s "alleged" father and not her "presumed" father. Although the juvenile court corrected its error some 10 months later, father contends that he suffered prejudice. Father also contends that insufficient evidence supports the juvenile court's finding that he failed to provide C.G. with the necessities of life thereby placing her at substantial risk of harm and damage within the meaning of Welfare and Institutions Code section 300, subdivision (b).¹ Because father suffered no prejudice from being designated temporarily as an alleged father and father does not challenge all of the grounds on which the juvenile court found jurisdiction over C.G., we affirm.

BACKGROUND²

Mother married father in November 2001. Mother and father were still married at the beginning of this case. C.G. was born in 2003, during mother and father's marriage. Mother also had two other young children with A.R.

On September 20, 2010, the Department of Children and Family Services (Department) filed a section 300 petition alleging that C.G. and her step-siblings came within the jurisdiction of the juvenile court.³ With respect to C.G., the petition alleged and the juvenile court sustained allegations pursuant to section 300, subdivisions (b) and (d) that A.R. had sexually abused C.G. from the time she was four-years-old and mother

¹ All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

² We limit our recitation of the facts to those necessary for resolution of father's claims on appeal. Because father does not challenge the sufficiency of the evidence supporting the juvenile court's jurisdictional findings that A.R. sexually abused C.G. and that C.G.'s mother, R.G. (mother), failed to protect C.G. from such abuse, we omit the facts supporting those findings.

³ C.G.'s step-siblings are not subjects of this appeal.

had failed to protect C.G. from that known, ongoing abuse. Pursuant to subdivision (b) of section 300, the petition alleged and the juvenile court sustained the allegation that father failed to provide C.G. with the necessities of life including food, clothing, shelter, and medical care thus endangering C.G.'s physical and emotional health, safety, and well being and placing her at risk of physical and emotional harm and damage.

According to the Department's September 20, 2010, Detention Report, mother lived with father for three years. Father physically abused mother, so she separated from him. Mother was still married to father, but was seeking a divorce. Mother's last telephone contact with father was on August 23, 2010. Mother reported that C.G. stated she wanted mother to reunite with father. Mother stated that reuniting with father was unrealistic. According to mother, father had never lived with C.G., and was a complete stranger to her.⁴

On September 20, 2010, mother filled out a Parentage Questionnaire that identified father as C.G.'s father. In the questionnaire, mother reported that she and father were married at the time of C.G.'s conception and birth and that father signed the birth certificate or other paperwork naming him as C.G.'s father. At the detention hearing, mother stated that father's name appeared on C.G.'s birth certificate. The juvenile court found father to be an "alleged" father pending mother's production of C.G.'s birth certificate. The juvenile court made prima facie findings that C.G. and her step-siblings were described by section 300 and ordered them detained.

The Department's October 19, 2010, Jurisdiction/Disposition Report attached a copy of C.G.'s birth certificate, which appeared to name father as C.G.'s father. The report stated that C.G. did not know father or where he lived. C.G. reported that she had only talked to father on the telephone about two times. Father told C.G. that he wanted to be with her, but she told him that she did not want to be with him. C.G. asked father about "what he did" to mother. Father said the allegation was not true.

⁴ The report stated that A.R. had never lived with C.G. In context, however, it is clear that the report intended to state that father had never lived with C.G.

Mother stated that C.G. did not know father because mother left Mexico when she was pregnant with C.G. due to father's physical abuse. Before coming to the United States, mother lived with her brother. Father did not send mother money to support C.G. Instead, father asked mother to lend him money. Since father arrived in the United States, he had not visited C.G. and did not have a relationship with her. C.G. first spoke with father when mother called father to ask for a divorce.

According to the report, father spoke with the social worker by telephone on September 27, 2010. Father denied any domestic violence. Father stated that he and mother had been separated since C.G. was born. Father had not had any contact with mother or C.G. until mother called him about a month prior. Father did not send mother money because she lived with her brother and said she did not need money. Father stated, "I can take care of my daughter, I want to be able to get custody of her."

In connection with a December 8, 2010, hearing, the Department reported to the juvenile court that father had not made any contact with the Department or C.G. since father spoke with the social worker on September 27, 2010. The Department's March 22, 2011, Interim Review Report recommended that father not be offered family reunification services in order to obtain custody of C.G. because father had made no effort to "resume" a relationship with C.G. and had not contacted the Department in order to obtain custody of C.G.

At the March 22 and 24, 2011, combined adjudication and disposition hearing concerning the allegations against mother and A.R., the juvenile court sustained the allegations that A.R. sexually abused C.G. and mother failed to protect C.G. from that abuse. The juvenile court declared C.G. and her step-siblings to be dependents of the court, removed custody of them from their parents, and ordered that the children be suitably placed. The adjudication and disposition hearing regarding father's alleged failure to provide for C.G. was continued.

At a hearing on May 12, 2011, the juvenile court appointed counsel for father. Counsel stated that she had not yet had a "meaningful conversation" with father and requested a three-week continuance. The juvenile court continued the adjudication and

disposition hearing to June 9, 2011. At the June 9, 2011, adjudication and disposition hearing, father's counsel stated she had not yet communicated with father due to her misunderstanding about how to contact him. The adjudication and disposition hearing ultimately was continued to July 15, 2011. At the July 15, 2011, adjudication and disposition hearing, the juvenile court sustained the allegation that father failed to provide for C.G. The juvenile court stated that father admitted that he never provided for C.G. and that mother and C.G. stated that they did not have a relationship with father.

With respect to disposition, the Department contended that father was not entitled to reunification services because father was an alleged father. After some discussion, the juvenile court held a hearing to address father's parental status at which hearing the juvenile court found father to be a "presumed" father. Based on that finding, the Department requested that the disposition hearing be continued so that it could submit an updated recommendation for the case. The juvenile court granted a continuance to August 18, 2011. On August 18, 2011, the Department submitted its recommendation that father participate in parenting and individual counseling to address a history of domestic violence and sexual abuse awareness due to A.R.'s sexual abuse of C.G. The juvenile court ordered father to participate in parental education and individual counseling to address a history of domestic violence and sexual abuse awareness due to A.R.'s sexual abuse of C.G. The juvenile court granted father monitored visitation with C.G. in California.

DISCUSSION

I. The Juvenile Court's Paternity Findings

Father contends that the juvenile court erred when it found that he was an "alleged" father rather than a "presumed" father and did not correct its error for 10 months. The error was prejudicial, father contends, because as a presumed father he was entitled to appointed counsel, reunification services, and custody. The Department contends that the juvenile court's error was not prejudicial. We agree with the Department.

A. Background

At the September 20, 2010, detention hearing, Referee Randolph Hammock initially found father to be C.G.'s presumed father because father was listed on C.G.'s birth certificate. Mother had filled out a Parentage Questionnaire that stated that mother and father were married at the time of C.G.'s conception and birth and that father signed the birth certificate or other paperwork naming him as C.G.'s father. On inquiry, mother stated that C.G. was born in Mexico and that C.G.'s birth certificate listed father as C.G.'s father. Mother possessed C.G.'s birth certificate, but did not have it with her in court. The Department argued that California does not have a "statutory presumption" for Mexican birth certificates. Referee Hammock stated that he would declare father to be C.G.'s alleged father pending mother's production of the birth certificate. Referee Hammock invited the parties to submit authorities on the issue.

At the adjudication and disposition hearing on July 15, 2011, after Judge Timothy Saito found true the allegation in the section 300 petition that father had failed to provide for C.G. under section 300, subdivision (b), the Department contended that father was not entitled to reunification services because father was an alleged father. Father's counsel noted that the Department submitted C.G.'s birth certificate to the court after Referee Hammock's paternity finding and father had not had the opportunity to again address father's parental status. Judge Saito held a hearing concerning father's parental status.

At the hearing, mother stated that she married father in November 2001, and that C.G. was born in October 2003 while she and father were married (at the inception of the dependency proceedings mother and father remained married). Judge Saito found, pursuant to Family Code section 7611, subdivision (a),⁵ that father was C.G.'s presumed

⁵ Family Code section 7611, subdivision (a) provides, "A man is presumed to be the natural father of a child if he meets the conditions provided in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 or in any of the following subdivisions: [¶] (a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court."

father. Based on Judge Saito's finding, the Department requested that the disposition hearing be continued so that it could submit an updated recommendation for the case. Judge Saito granted a continuance to August 18, 2011. On August 18, 2011, the Department submitted its updated recommendation that the disposition case plan for father include parenting and individual counseling to address a history of domestic violence and sexual abuse awareness due to A.R.'s sexual abuse of C.G. The juvenile court ordered father to participate in parental education and individual counseling to address a history of domestic violence and sexual abuse awareness due to A.R.'s sexual abuse of C.G. The juvenile court granted father monitored visitation with C.G. in California.

B. Application of Relevant Principles

A man is a child's "presumed" father if he and the child's natural mother were married to each other and the child was born during the marriage. (Fam. Code, § 7611, subd. (a); *In re Elijah V.* (2005) 127 Cal.App.4th 576, 584.) A man is an "alleged" father if he might be the child's father but he has not established biological paternity or presumed father status. (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1209.) A presumed father is entitled to appointed counsel (§ 317, subd. (a)) and reunification services (§ 361.5, subd. (a)). (*In re T.R.*, *supra*, 132 Cal.App.4th at p. 1209.) A presumed father also is entitled to custody of a dependent child if the juvenile court finds that such custody would not be detrimental to the child (§ 361.2, subd. (a)). (*In re T.R.*, *supra*, 132 Cal.App.4th at p. 1209; *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132.) An alleged father is not entitled to appointed counsel, reunification services (*In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120), or custody (*In re O.S.* (2002) 102 Cal.App.4th 1402, 1410).

Because C.G. was born during mother and father's marriage, father was a presumed father and the juvenile court erred when it found father to be an alleged father. (Fam. Code, § 7611, subd. (a); *In re Elijah V.*, *supra*, 127 Cal.App.4th at p. 584.) Father claims that the juvenile court's error in finding him an alleged father and failure to

correct the error for 10 months was prejudicial because it denied him counsel and reunification services from the beginning of the case. Father contends that if he had been represented by counsel and had been participating in reunification services beginning in September 2010 instead of July 2011, he “would have had an opportunity to work toward regaining custody of [C.G.]” Father contends he had a job in landscaping in Atlanta, Georgia and was willing and financially able to care for C.G. Having appointed counsel and reunification services beginning in September 2010 “would have made a difference in [father’s] opportunity to regain custody of [C.G.]”

It is plain that if the juvenile court had appointed counsel for father and father had started reunification services in September 2010, father would have been able to begin the process of attempting to gain custody of C.G. sooner. Ultimately, however, counsel was appointed for father and, at the Department’s recommendation, father was given reunification services. Father does not explain, and we do not perceive, how an earlier appointment of counsel and earlier participation in reunification services necessarily or even likely would have led to father gaining custody of C.G. At no time did father have a relationship with C.G. or provide for her. Father can now take steps, including reunification services, to gain custody of C.G. Accordingly, father has failed to demonstrate that he suffered prejudice from the juvenile court’s error.

II. The Juvenile Court’s Jurisdictional Findings

Father contends that the juvenile court’s finding that it had jurisdiction over C.G. under section 300, subdivision (b) because he failed to provide C.G. with the necessities of life was not supported by substantial evidence. Father does not challenge the juvenile court’s finding that it had jurisdiction over C.G. under section 300, subdivisions (b) and (d) based on A.R.’s sexual abuse of C.G. and mother’s failure to protect C.G. from A.R.’s sexual abuse. Because father does not challenge the juvenile court’s finding that it had jurisdiction over C.G. based on A.R.’s conduct and mother’s and A.R.’s neglect, we need not reach the challenged jurisdictional finding under section 300, subdivision (b) based on father’s failure to provide for C.G.

For jurisdictional purposes, it is irrelevant which parent created the circumstances that establish jurisdiction. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.) “[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent. [Citation.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent. [Citation.]” (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.) Thus, “an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence. [Citations.]” (*In re I.A., supra*, 201 Cal.App.4th at p. 1492.) Because father does not challenge the juvenile court’s finding that it had jurisdiction over C.G. under section 300, subdivisions (b) and (d) based on A.R.’s conduct and mother’s and A.R.’s neglect, we need not reach father’s challenge to the juvenile court’s jurisdictional finding under section 300, subdivision (b) based on his failure to provide for C.G. (*In re I.A., supra*, 201 Cal.App.4th at p. 1492; *In re Alexis H., supra*, 132 Cal.App.4th at p. 16.)

Father contends that we should nevertheless address the juvenile court’s finding as to his conduct under section 300, subdivision (b) because it affected the case apart from establishing jurisdiction. According to father, the juvenile court’s finding affected his reunification services—he was ordered to attend parent education and individual counseling to address a history of domestic violence and sexual abuse awareness due to C.G. being a victim of A.R.’s sexual abuse and he was granted only monitored visits with C.G. in California. A jurisdictional finding under section 300, subdivision (b) with respect to father’s conduct was unnecessary for the juvenile court to order father to participate in parent education and individual counseling and to order monitored visitation. (*In re I.A., supra*, 201 Cal.App.4th at p.1492 [“A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established”].) Moreover, the services the juvenile court ordered were not directed at its jurisdictional finding that father failed to provide for C.G. The individual counseling and education concerned

father's alleged domestic violence and A.R.'s sexual abuse of C.G. Monitored visitation was appropriate, for C.G. did not know father and father never played a role in C.G.'s life.⁶

DISPOSITION

The order is affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.

⁶ Father does not challenge directly the juvenile court's order for monitored visitation. An order setting the terms of visitation is reviewed for an abuse of discretion. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.) Father does not suggest that the juvenile court's order that visitation be monitored was arbitrary, capricious, or patently absurd. (*Ibid.*)